

APPENDIX 12 - B.2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD AMENDMENT TO
AIA DOCUMENT B181 STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT FOR HOUSING SERVICES
FOR HUD PROJECT NO. _____

The provisions of this Amendment supersede and void all inconsistent provisions that may exist between this Amendment and the Agreement.

1. Definition of terms used in this Amendment. If not defined in this Amendment, terms shall have the meaning given them in the Agreement.
 - a. Agreement. The AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services, between the Owner and the Architect to which this Amendment is attached.
 - b. HUD. The U.S. Department of Housing and Urban Development.
 - c. Mortgagee. The Lender, as defined in the HUD regulatory agreement applicable to this transaction.
 - d. Owner. The Borrower, as defined in the HUD regulatory agreement applicable to this transaction.
 - e. Subcontractor. Any person or entity providing services, material supplier, equipment lessor or industrialized housing manufacturer/supplier who has a direct contract with the Contractor responsible for construction of the Project.

2. The Owner and the Architect represent that they have complied with outstanding architectural instructions in accordance with the Multifamily Accelerated Processing (MAP) Guide (for projects processed under the MAP Guide) or Handbook 4460.1 REV-2, Architectural Analysis and Inspections for Project Mortgage Insurance (for other projects), including review for compliance with appropriate HUD Minimum Property Standards; the accessible design, construction and alteration requirements of Section 504 of the Rehabilitation Act of 1973 (see 24 C.F.R. Part 8); the Fair Housing Accessibility Guidelines; the Uniform Federal Accessibility Standards; the accessible design and construction requirements of the Fair Housing Act (see 24 C.F.R. § 100.205 and ANSI-A117.1 - 1986, incorporated by reference into 24 C.F.R. Part 100); the Americans with Disabilities Act Guidelines, 37 C.F.R. Part 1191; and other current HUD directives. The Owner and Architect further represent that they will perform services for one another in accordance with the applicable requirements contained in these HUD directives.

3. No portion of the duties, responsibilities and authority of the Architect or Owner shall be restricted, modified or extended, nor shall this Agreement be assigned in whole to anyone, without the written consent of HUD. Neither the Owner nor the Architect shall contract with anyone currently listed by the General Services Administration as a firm which is disbarred, suspended, proposed for debarment, or declared ineligible by federal agencies or by the General Accounting Office. The Owner and the Architect shall each require from their contractors, consultants and agents similar agreements

(a) prohibiting contracts with such persons or entities and (b) requiring previous participation certificates.

4. In order to assure the timely and economical completion of the project, the Owner, the Owner's Mortgagee, the surety under the performance bond or HUD may take control of the project or take responsibility for completion of the project's construction pursuant to said parties' legal rights under the agreements concerning the project. In such event, and notwithstanding the provisions of Paragraph 6.1 of this Agreement, the party taking control or taking responsibility for completion of construction, and any substitute contractor hired by said party, shall have the right to use the Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants. Such use shall be to the same extent and with the same limitations as the Owner under this Agreement or as the Contractor under the AIA Document A201 General Conditions of the Contract for Construction, provided the Owner has paid the Architect in accordance with this Agreement and is not in breach or default thereunder. The Architect's execution of this Amendment shall represent consent by the Architect and the Architect's consultants to such use.

5. The Owner shall provide information to or obtain approval from the Owner's Mortgagee and HUD regarding any action or observation by either the Owner or the Architect that significantly increases the Project's cost or time of construction or decreases the quality of construction.

a. The Architect shall assist the Owner in fulfilling the Owner's obligations to the Mortgagee and HUD by furnishing them with copies of all construction observation reports, certificates for payment, certificate of Substantial Completion, architect's supplemental instructions and other written interpretations of the Contract Documents made in the Architect's official capacity during the project.

b. The certificates for payment and the certificate of Substantial Completion shall be in forms as prescribed by HUD.

6. Notwithstanding the provisions of Article 9.8, the Architect shall:

a. Advise the Owner on:

(1) The type of consultant Owner should employ to specifically identify suspected on-site hazardous materials and preparation of the necessary Specifications for their abatement in accordance with HUD and other jurisdictional requirements, where:

(a) The Phase I Environmental Report supplied by the Owner and/or other Owner supplied data indicate the potential presence of any hazardous material, or

(b) The Architect observes or is otherwise made aware of potential on-site hazardous materials during the course of performing Project duties, including during the construction phase for the rehabilitation of existing improvements.

(2) The format in which the Owner's consultants should prepare their Specifications for eliminating identified hazardous materials, and

b. Incorporate the Owner's consultant's specifications for abatement of the hazardous conditions into the construction documents, i.e., bid documents, or change orders where hazardous materials are identified during construction.

7. This Agreement shall not be terminated without seven days prior written Notice to the Mortgagee and HUD.

8. The Owner and the Architect recognize the interest of the Mortgagee and HUD and that any action or determination by either the Owner or the Architect is subject to acceptance or rejection by the Mortgagee and by HUD.

9. In addition to any other rights or remedies the Owner may have under this Agreement, if a duly authorized representative of HUD requests that the Architect be replaced due to the Architect's inadequate performance, unjustified delay or misrepresentation of material facts, the Owner may terminate this Agreement after giving the Architect at least seven days' written notice and an opportunity to correct such default.

10. The Architect administering the Construction Contract shall disclose any identity of interest with the Owner, Contractor, and/or any Project subcontractor. An identity of interest is construed to exist where:

- a. The Architect has any financial interest in the Project other than the fee for professional service.
- b. The Architect advances any funds to the Owner, Contractor and/or any subcontractor; and/or the Contractor and/or any subcontractor advance any funds to the Architect.
- c. The Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or the Owner, contractor and/or any subcontractor has any financial interest in the Architect.
- d. Any officer, director, stockholder or partner of the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any officer, director, stockholder or partner of the Owner, Contractor and/or any subcontractor has any financial interest in the Architect.
- e. Any officer, director, stockholder or partner of the Architect is also an officer, director, stockholder or partner of the Owner, Contractor, and/or any subcontractor.
- f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor provides any of the required architectural services or, while not directly providing an architectural service, acts as a consultant to the Architect.
- g. Any family relationships exist between the officers, directors, stockholders or partners of the Architect and officers, directors, stockholders or partners of the Owner, Contractor, and/or any subcontractor that could cause or result in control of or influence over prices paid to the Architect or could result in control of or influence over performance by the Architect.
- h. Any side deal, agreement, contract or undertaking, that is inconsistent with related requirements for the relationship between the Owner and Architect as stipulated in the closing documents, except as approved by HUD.

11. All identities of interest known to exist between the Architect and the Owner, Contractor and/or any subcontractor are listed herein. The Architect and Owner shall each inform HUD in writing within 5 working days of its first knowledge of any identity of interest that develops after execution of this Agreement. Upon the discovery of an undisclosed identity of interest, HUD may require the termination of this Agreement in accordance with paragraph 9, above.

List All Identities of Interest:

12. The funds for this Project, including the Architect's funds under this Agreement, will be provided, as the case may be, by the proceeds of a mortgage from a Mortgagee who in turn obtained commitment for mortgage insurance from HUD, in accordance with the National Housing Act, or from a capital advance from the US Treasury pursuant to Section 202 of the Housing Act of 1959 or Section 811 of the Cranston-Gonzalez National Affordable Housing Act. Said Mortgagee, pursuant to the terms of a Building Loan Agreement, or said US Treasury, pursuant to a Capital Advance Agreement, in accordance with HUD's rules and regulations, will agree to advance the proceeds of the mortgage or capital advance to the Owner for completion of the work, but only to the extent that charges accrued and only to the extent and for the purposes specified in the Building Loan Agreement or Capital Advance Agreement. The Building Loan Agreement or Capital Advance Agreement, when executed, shall specify the mortgage or capital advance proceeds available for the Design Phase and for administration of the Construction Contract during the Construction Phase. However, neither the mortgage or capital advance, nor the Building Loan Agreement or Capital Advance Agreement, provide funds for Reimbursable Expenses pursuant to paragraph 10 of this Agreement, Termination Expenses pursuant to paragraph 8 of this Agreement, or Additional Service Compensation pursuant to paragraph 11 of this Agreement. Although the Architect may agree to provide a greater degree of services for additional compensation, require compensation for reimbursable expenses or termination expenses, or require basic compensation in excess of that provided by the Building Loan Agreement or Capital Advance Agreement for such services, the obligation to compensate the Architect for the greater degree of services or the aforesaid expenses shall not be enforceable against the Owner, the Mortgagee, US Treasury, HUD or the Project; provided, however, that any entity or individual other than Owner may agree to be responsible to the Architect for payment thereof and, in such case, shall be identified below.

Provider of additional payment pursuant to paragraph 12 of this Amendment, if any.

Executed as of the _____ day of _____, 20____.

OWNER

ARCHITECT

DATE: _____

DATE: _____

[Remainder of this page intentionally left blank.]

CERTIFICATION

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: _____ /s/ _____

Printed Name, Title: _____

Dated: _____

By: _____ /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Department of Housing and Urban Development, acting by and through the
Federal Housing Commissioner

Authorized representative: _____

Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R parts 24, 28 and 30.